(2)

No. 93-1717

Supreme Court, U.S.
FILED
MAY 26 1994
OFFICE OF THE CLERK

In the Supreme Court of the United States

October Term, 1993

GERALD SNYDER,

Petitioner,

v.

CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE; CONSOLIDATED FREIGHTWAYS, INC., a California Corporation; and CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL 150, an Unincorporated Labor Organization,

Respondents.

On Petition For a Writ of Certiorari To
The United States Court of Appeal
For the Ninth Circuit

JOINT OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

GLENDA N. REAGER, #143014
HARDY ERICH BROWN & WILSON
A Professional Corporation
1000 G Street
Sacramento, California 95814
P.O. Box 13530
Sacramento, California 95853-4530
(916) 449-3800

Attorneys for Consolidated Freightways, Inc.

ROBERT BONSALL, #119261
BEESON, TAYER & BODINE
1001 Sixth Street, Suite 500
Sacramento, California 95814
(916) 441-2196

Attorneys for Chauffeurs, Teamsters and Helpers Union Local 150

All parties and known subsidiaries are listed in the caption

26 pp.

ISSUES ON APPEAL

A. Whether Collective Bargaining Agreements Are To Be Interpreted for the Benefit of an Individual Union Member Under Rules Regarding Third-Party Beneficiary Claims

B. Whether Plaintiff Raised a Triable Issue of Fact Regarding the Correct Calculation of Tours of Duty Under the National Master Freight Agreement ("NMFA")

C. Whether Plaintiff Raised a Triable Issue of Fact Regarding Consolidated's Alleged Breach of the Collective Bargaining Agreement

D. Whether Plaintiff Raised a Triable Issue of Fact Regarding the Union's Alleged Breach of Its Duty of Fair Representation Under the NLRA

TABLE OF CONTENTS

Table of Authorities . . . . . (ii)

I. STATEMENT OF PARTIES AND JURISDICTION 1

II. STATEMENT OF THE CASE 1

III. ARGUMENT 8
A. Summary 8
B. Legal Argument 11
1. The NMFA Should Be Interpreted by Reference to Federal Substantive Law . . . 11
2. Plaintiff Has Not Raised a Triable Issue of Material Fact Regarding the Correct Calculation of Tours Pursuant to Article 58 of the NMFA 13
3. Plaintiff Did Not Raise a Triable Issue of Fact Regarding Consolidated's Alleged Breach of the CBA . . 15
4. Plaintiff Has Not Raised a Triable Issue of Fact Regarding an Alleged Breach of the Duty of Fair Representation by the Union 17

IV. CONCLUSION 21

TABLE OF AUTHORITIES

Cases **Page**

Banks v. Bethlehem Steel Corporation, 870 F.2d 1438, 1441 (9th Cir. 1989) 18

Clayton v. Republic Airlines, Inc., 716 F.2d 729, 732 (9th Cir. 1983) 18

Del Costello v. International Brotherhood of Teamsters, 462 U.S. 151, 165 (1983) 19

Dudtrisac v. Caterpillar Tractor Company, 749 F.2d 1270, 1272 (9th Cir. 1983) 17

Johnson v. United States Postal Service, 756 F.2d 1461, 1465 (9th Cir. 1985) 18

Lewis v. Benedict Coal Corporation, 361 U.S. 459, 468 (1959) 12

Peterson v. Kennedy, 771 F.2d 1244, 1254 (9th Cir. 1985), cert. den., 475 U.S. 1122 (1986) 19

S.A. Impresa de Viacao Aerea Rio Grandense v. Walter Kidd and Company, 690 F.2d 1235, 1238 (9th Cir. 1982) 15

Vaca v. Sipes, 386 U.S. 171, 190 (1967) 17

Other Authorities

National Master Freight Agreement and the Western States Area Supplemental Agreement . . . 1, 8, 9, 11, 13, 14

art. 58, § 1(c) 2, 8
art. 58 . . . . . 2, 3, 13, 15, 16

Restatement (Second) Contracts, § 207 . . . . . 6, 7, 9

I.

STATEMENT OF PARTIES AND JURISDICTION

Defendants concur with plaintiff's statement of the parties and jurisdiction.

II.

STATEMENT OF THE CASE

In August 1990, Consolidated Freightways, Inc. (hereinafter "Consolidated") hired plaintiff Gerald J. Snyder (hereinafter "plaintiff") as a supplemental driver. The terms and conditions of plaintiff's employment were set forth in a National Master Freight Agreement and the Western States Area Supplemental Agreement (hereinafter collectively "NMFA"), a multi-employer collective bargaining agreement negotiated by the International Brotherhood of Teamsters. (Appendix to Snyder's Petition for Writ of Certiorari, (hereinafter "Appendix") at p. 1.)

Pursuant to article 58, section 1(c) of the NMFA, an employer has 30 days after an employee completes 40 tours of duty to perform processing and to notify the union and the employee that the employee does not meet company standards. (Appendix at pp. 16-18.)

Article 58 sets forth no standards or criteria, such as good cause, the company must meet in making its decision not to hire a supplemental driver who has completed 40 tours of duty. (Appendix at pp. 16-18 and 31.)

If the employer fails to give the notice within 30 days after a driver has completed the 40th tour of duty, the driver is placed on a preferential hire list. (Appendix at p. 31.)

Consolidated and plaintiff's union, the Chauffeurs, Teamsters and Helpers Union, Local No. 150 (hereinafter the

"Union"), using the method accepted by both parties to the contract since its inception, calculated that plaintiff completed his 40th tour on December 28, 1990. (Appendix at pp. 3 and 12.)

Plaintiff, without any explanation for the method used, calculated his 40th tour to have occurred on December 5, 1990. (Appendix at pp.3-4, 12 and 13.)

On January 8, 1991, Consolidated gave plaintiff notice that Consolidated would no longer use his services as a driver pursuant to NMFA Section 58. (Appendix at pp. 12 and 31-32.)

On June 21, 1991, plaintiff filed his original complaint, amended October 21, 1991, alleging damages for breach of the collective bargaining agreement against Consolidated and breach of the duty of their representation against his union,

Chauffeurs, Teamsters and Helpers Union, Local No. 150. (hereinafter the "Union"). (Appendix at pp. 1-2 and 10.)

Plaintiff alleges his calculation of the tours of duty should take precedence over the established method of calculation followed by both Consolidated and the Union because he is a third-party beneficiary to the CBA. (Appendix at p. 2.)

Following the close of discovery, defendants Consolidated and the Union brought motions for summary judgment before the Honorable Edward J. Garcia of the United States District Court, Eastern District of California. (Appendix at p. 7-14.) Defendants presented sworn affidavits of union and company officials as well as experienced truck drivers to prove the correct method of calculation of

tours under the CBA. (Appendix at pp. 3, 12-13 and 33-34.)

Specifically, Consolidated and the Union demonstrated that plaintiff had miscalculated his tours by equating several of his "shuttle" dispatches as "turnaround" dispatches, and thus, crediting himself with multiple tours of duty. (Appendix at pp. 3, 12-13 and 33-34.)

On October 16, 1992, Judge Garcia heard oral argument on defendants' motions for summary judgment and ruled that plaintiff had failed to raise a triable issue of fact regarding a breach of contract by Consolidated or a breach of the duty of fair representation by the Union. (Appendix at pp. 7-13.)

On November 10, 1992, plaintiff filed his Notice of Appeal to the United States Court of Appeal for the Ninth Circuit.

Plaintiff's questions on appeal were (1) whether the proper standard for construction of the collective bargaining agreement was to protect the interest of intended third-party beneficiary Union members pursuant to Restatement (Second) Contracts, section 207; (2) whether plaintiff produced sufficient evidence to demonstrate a genuine triable issue of fact with respect to his claim of a breach of duty of fair representation by the Union; and (3) whether plaintiff produced sufficient evidence to demonstrate a genuine triable issue of fact with respect to his claim of a breach of the collective bargaining agreement by Consolidated. (Appendix at 1-5.)

On January 12, 1994, the Ninth Circuit Court of Appeal, Circuit Judges Choy, Schroeder and Noonan, on the record

submitted, affirmed Judge Garcia's granting of summary judgment and held (1) Snyder failed to establish sufficient ambiguity surrounding the technical terms entering into the calculation of tours of duty to justify application of section 207 or reliance on other rules of construction; (2) Snyder's self-serving conception of the public interest conflicts directly with an expressly stated and judicially recognized goal of Congress -- promotion of uniform federal labor law encouraging unions and employers to contract for the final arbitral or judicial resolution of disputes; (3) collective bargaining agreements are not typical third-party beneficiary contracts; therefore, the rule of construction urged by Snyder is inapposite; (4) Snyder failed to raise the triable issue of fact precluding summary

judgment with regard to alleged breach of the notice of termination provisions in the NMFA; and (5) Snyder failed to show a breach of the duty of fair representation by the Union. (Appendix at pp. 1-5.)

Consolidated and the Union now request this Court deny plaintiff's writ and affirm the granting of summary judgment to Consolidated and the Union.

III.

ARGUMENT

A. Summary

Plaintiff's complaint hinges upon the correct calculation of tours of duty under article 58, section 1(c) of the NMFA.

According to plaintiff's calculation, he completed his 40th tour of duty on December 5, 1990. (Appendix at p. 12.)

According to defendants Union and Consolidated, plaintiff completed his 40th

tour of duty on December 28, 1990. (Appendix at pp. 12.)

Plaintiff has submitted no testimony or evidence regarding the correct method of calculating tours of duty under the NMFA. (Appendix at pp. 3 and 13.)

The Union and Consolidated have submitted the sworn declarations of Union official Archie Murrietta, Consolidated representative Richard Alvarez and truck drivers Archie Burkhalter and Jim Thomas which attest to the correct method of calculating tours. (Appendix at pp. 3 and 12-13.)

Plaintiff argues that the NMFA should be interpreted pursuant to the Restatement Second of Contracts, section 207, and state law which protects the interests of third-party beneficiaries. (Petition, Question 1 and p. 12 and Appendix at p.2.)

In essence, plaintiff's argument is that the collective bargaining agreement should be interpreted for his individual benefit even though both parties to the collective bargaining agreement, the Union and Consolidated, agree as to the correct method of calculating tours under the contract. As argued below, such an interpretation is contrary to the public policy of establishing a uniform federal law and established case law under the NLRA.

Both the district court and the Ninth Circuit Court of Appeal held that the Restatement Second is not a proper basis for interpreting a collective bargaining agreement and that plaintiff had failed to raise a triable issue regarding the Union's duty of fair representation or a breach of contract by Consolidated.

The Union and Consolidated now request this Court summarily deny plaintiff's petition and affirm the summary judgment granted by the Eastern District and Ninth Circuit Court of Appeal.

B. Legal Argument

1. The NMFA Should Be Interpreted by Reference to Federal Substantive Law

Plaintiff argues that the NMFA should be interpreted under Restatement Second of Contracts and general public policies against forfeitures and in favor of third-party beneficiaries.

Plaintiff's "self-serving conception of the public interest conflicts directly with an expressly stated and judicially recognized goal of Congress -- promotion of uniform federal labor law encouraging unions and employers to contract for the final arbitral or judicial resolution of

disputes. See, Allis-Chambers Corp. v. Lueck, 471 U.S. 202, 210 (1985)." (Appendix at p. 2.)

Unions and employers would not enter national agreements if each state, or individual employee, was able to interpret the agreement to suit its (his) needs. (Ibid.)

In addition, "the Supreme Court has explicitly held that collective bargaining agreements are not typical third-party beneficiary contracts. (Lewis v. Benedict Coal Corporation, 361 U.S. 459, 468 (1959); Appendix at page 2.) Therefore, the rule of construction urged by plaintiff is inapposite and this Court should affirm the granting of summary judgment.

2. Plaintiff Has Not Raised a Triable Issue of Material Fact Regarding the Correct Calculation of Tours Pursuant to Article 58 of the NMFA

Plaintiff requests reversal of the trial court's finding, and the appellate court's affirmation, that he has not raised a triable issue of material fact regarding the correct calculation of tours of duty under article 58 of the NMFA. Plaintiff's petition should be summarily denied because he cannot raise a triable issue of fact regarding the correct calculation of tours under the NMFA.

The dispute between plaintiff and defendants hinged on application of the terms "shuttle" and "turnaround" dispatchs and their conversion into tours of duty. The Union and Consolidated presented the sworn affidavits of four officials with

varied and considerable experience in the trade, including a union official, a firm representative and two truck drivers attesting to the correct method of calculating tours of duty under the NMFA. In addition, representatives of both Consolidated and the Union submitted affidavits declaring that plaintiff had erroneously double counted shuttle runs within a single shift on four occasions prior to December 8, 1990, and twice thereafter. (Appendix at p. 3.)

On the other hand, plaintiff made summary assertions about the number of tours of duty he earned on each dispatch without explaining his method for calculating tours or even designating tours by type of dispatch. A "'party cannot manufacture a genuine issue of material fact merely by making assertions.'"

(S.A. Impresa de Viacao Aerea Rio Grandense v. Walter Kidd and Company, 690 F.2d 1235, 1238 (9th Cir. 1982); Appendix at p. 3.)

Plaintiff presented no evidence to rebut the affiants' designation of the disputed hauls as shuttle dispatches and consequently differing calculation of the expiration date for Snyder's probationary period. (Appendix at pp. 3-4.)

Therefore, plaintiff failed to raise a triable issue of material fact and summary judgment should be affirmed.

3. Plaintiff Did Not Raise a Triable Issue of Fact Regarding Consolidated's Alleged Breach of the CBA

Article 58 of the NMFA states that an employer has 30 days after an employee completes 40 tours of duty to perform processing and to notify the Union and employee that the employee does not meet

company standards. (Appendix at pp. 16-18 and 31.)

Article 58 sets forth no standards or criteria, such as good cause, the company must meet. The history of bargaining and practice between employers and the Union establishes the company's absolute right to give the notice without providing any reason to the employee. (Appendix at pp. 12 and 31.)

The 30-day processing period is considered probationary and an employee may be terminated with or without cause during this time if the employer determines that the employee fails to meet company standards. (Appendix pp. 12 and 31.)

In opposition to summary judgment, plaintiff presented no evidence to rebut Consolidated's proof that it had an absolute right to terminate plaintiff

within the 30-day probationary period. (Appendix at pp. 3-4.)

Therefore, plaintiff failed to raise a triable issue of fact regarding a breach of contract by Consolidated and his Petition should be summarily denied.

4. Plaintiff Has Not Raised a Triable Issue of Fact Regarding an Alleged Breach of the Duty of Fair Representation by the Union

Plaintiff's third contention that the Union breached its duty of fair representation fails on a number of grounds. Firstly, plaintiff has failed to support a contention that the Union's conduct toward him was " 'arbitrary, discriminatory or in bad faith' " and thus in violation of its duty of fair representation under Dutrisac v. Caterpillar Tractor Company, 749 F.2d 1270, 1272 (9th Cir. 1983), quoting Vaca v.

Sipes, 386 U.S. 171, 190 (1967). (Appendix at p. 4.)

Balancing collective and individual interests in making decisions whether to pursue and individual employee's grievance, unions retain wide discretion and substantial deference from the courts in suits alleging unfair representation. (Banks v. Bethlehem Steel Corporation, 870 F.2d 1438, 1441 (9th Cir. 1989); Johnson v. United States Postal Service, 756 F.2d 1461, 1465 (9th Cir. 1985); Appendix at p. 4.)

Assuming, arguendo, that the Union's conduct was negligent, a proposition plaintiff did not support, mere negligent conduct on the Union's part would not constitute a breach of the duty of fair representation. (Clayton v. Republic Airlines, Inc., 716 F.2d 729, 732 (9th Cir.

1983), Appendix at pp. 4-5.) Provided that the union's decision was in good faith and nondiscriminatory, its processing of plaintiff's grievance need not be error-free. (Peterson v. Kennedy, 771 F.2d 1244, 1254 (9th Cir. 1985), cert. den., 475 U.S. 1122 (1986); Appendix at pp. 4-5.)

Even if the Union failed to file a timely grievance, which, once again, plaintiff failed to substantiate, such failure would not have prejudiced Snyder's rights. To prevail on a claim against a union for breach of its duty of representation, the plaintiff must prove that the duty was breached and that the underlying grievance would have been meritorious. Del Costello v. International Brotherhood of Teamsters, 462 U.S. 151, 165 (1983). (Appendix at p.5.)

Plaintiff did not raise a triable issue of fact as to the merits of his grievance, much less furnish grounds from which a meritorious grievance could plausibly be ascertained. (Appendix at p. 5.)

Therefore, plaintiff's Petition should be denied and the district court's grant of summary judgment should be affirmed.

IV.

CONCLUSION

For all of the reasons set forth above, defendants Union and Consolidated hereby request this Court summarily deny plaintiff's Petition.

Dated: May 24, 1994

Respectfully submitted,

HARDY ERICH BROWN & WILSON
A Professional Corporation

By _____
GLENDA N. REAGER
State Bar No. 143014

Attorneys for Consolidated Freightways, Inc.

BEESON, TAYER & BODINE

By _____
ROBERT BONSALL
State Bar No. 119261

Attorneys for Chauffeurs, Teamsters and Helpers Union Local 150